

1 BILL NO. S-91-09- 11

2 SPECIAL ORDINANCE NO. S-235-91.

3 AN ORDINANCE approving Contract #91-  
4 05, ASPHALT RESTORATION OF WATER  
5 MAINTENANCE UTILITY CUTS between  
6 BROOKS CONSTRUCTION COMPANY and the  
7 City of Fort Wayne, Indiana, in  
8 connection with the Board of Public  
9 Works.

10 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON  
11 COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

12 SECTION 1. That the Contract #91-05, ASPHALT  
13 RESTORATION OF WATER MAINTENANCE UTILITY CUTS by and  
14 between BROOKS CONSTRUCTION COMPANY and the City of Fort  
15 Wayne, Indiana, in connection with the Board of Public  
16 Works, is hereby ratified, and affirmed and approved in  
17 all respects, respectfully for:

18 the repair of asphalt utility cuts that were  
19 made by the water utility;

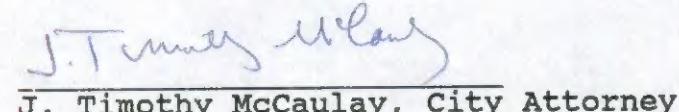
20 involving a total cost of Ninety-Six Thousand Nine  
21 Hundred Ninety-Nine and no/100 Dollars (\$96,999.00).

22 SECTION 2. Prior Approval has been requested  
23 from Common Council on SEPTEMBER 10, 1991. Two copies of  
24 said Contract are on file with the Office of the City  
25 Clerk and made available for public inspection, according  
26 to law.

27 SECTION 3. That this Ordinance shall be in  
28 full force and effect from and after its passage and any  
29 and all necessary approval by the Mayor.

30   
31 Councilmember

32 APPROVED AS TO FORM  
33 AND LEGALITY

  
34 J. Timothy McCaulay, City Attorney

## CONSTRUCTION CONTRACT

Board Order 113-91

Contract 91-05

Work Order 64278

THIS CONTRACT made and entered into in triplicate this 4 day of Sept, 1991, by and between BROOKS CONSTRUCTION CO., INC., herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works and Safety, herein called OWNER;

WITNESSETH, that the CONTRACTOR and the OWNER, for the considerations hereinafter named, agree as follows:

### ARTICLE 1: SCOPE OF WORK

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following:

#### **TO REPAIR ASPHALT UTILITY CUTS THAT WERE MADE BY THE WATER UTILITY.**

All in accordance with the specifications of Contract Number **91-05**, prepared by the Fort Wayne Water Engineering Department, Street Engineering Department, and Right of Way Cut Permit Specifications, and according to the Detailed Specifications and Conditions contained within the Bid Specifications for Contract 91-05.

### ARTICLE 2: THE CONTRACT SUM

The owner shall pay CONTRACTOR for the performance of the contract, the unit price sum of **\$96,999.00 (NINETY SIX THOUSAND NINE HUNDRED NINETY NINE DOLLARS AND NO CENTS)**. In the event the amount of work is increased or decreased by OWNER, the contract sum shall be increased or decreased according to the unit price schedule set forth in the CONTRACTOR'S Proposal.

### ARTICLE 3: PROGRESS PAYMENTS

The OWNER shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by OWNER upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the **15th day of the following month**, ninety (90%) percent of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the CONTRACTOR and approved or revised by the Engineering Department of the OWNER less the aggregate of previous payments, will be paid by OWNER to the CONTRACTOR.

#### **ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT**

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a **Completion Affidavit** by the **CONTRACTOR** that the work is ready for final inspection and acceptance, the **Board of Public Works and Safety** will direct the **Engineering Department** of the **OWNER** to promptly make such inspection. When the **Engineering Department** finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the **Board of Public Works and Safety**, which shall issue a **final certificate** stating that the work provided for in this Contract has been completed and is accepted. Thereupon, the entire balance of the Contract sum shall be due and payable to the **CONTRACTOR**; provided only that **CONTRACTOR** shall first furnish **OWNER**, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

#### **ARTICLE 5: WORKMEN'S COMPENSATION ACT**

The **CONTRACTOR** will furnish immediately a certificate from the **Industrial Board of the State of Indiana**, that he has complied with the **Workmen's Compensation Act** in accordance with **Statutes of the State of Indiana and Ordinances of the City of Fort Wayne**.

Any judgment rendered against the **City of Fort Wayne** in any suits for Damages for injury to real or personal property, or for injury sustained by any person growing out of any act or doing of **CONTRACTOR**, or its agents, employees or workmen or any judgment of any court or award of any **Board of Arbitrators** or of the **Industrial Board of the State of Indiana** rendered against the **City of Fort Wayne** in any suit or claim arising under said **Workmen's Compensation** for accidental injuries or death suffered by his employees or the employees of any Subcontractor(s) in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said **CONTRACTOR**, shall be conclusive against **CONTRACTOR** as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that **CONTRACTOR** indemnify and hold harmless **OWNER** in the premises.

#### **ARTICLE 6: NONDISCRIMINATION OF LABOR**

The **CONTRACTOR** further agrees to be bound by **Section 15-13 (as amended)**, of the **Code of the City of Fort Wayne, Indiana of 1974**, passed by the **Common Council of the City of Fort Wayne, Indiana** as **General Ordinance No. G-34-78 (as amended)** on December 12th, 1978. The successful bidder shall file a **Manpower Utilization Report** for this project with the **Compliance Office** within ten (10) days after completion of construction or upon request of the **Office of Compliance**.

## ARTICLE 7: PREVAILING WAGE SCALE

The **CONTRACTOR** agrees to pay, and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the **Statutes of the State of Indiana**, and the **Ordinances of the City of Fort Wayne** according to the applicable wage scale as included in the bid documents.

## ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

- a. Advertisement for Bids for Contract No. **91-05**
- b. Instructions to Bidders for Contract **91-05**
- c. Contractor's Proposal dated **10 July 1991**
- d. Drawings
- e. Supplemental Specifications for Contract No. **91-05**
- f. Workman's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.
- g. Non-Discrimination of Labor, General Ordinance No. **G-34-78** (as amended).
- h. Prevailing Wage Scale.
- i. Performance and Guaranty Bond.
- j. Labor and Material Payment Bond.
- k. Comprehensive Liability Insurance Coverage.
- l. Form **96**.

## ARTICLE 9: GUARANTEE OF WORKMANSHIP

At the time of execution of this contract, the **CONTRACTOR** shall furnish a **Performance and Guaranty Bond** in favor of the **City of Fort Wayne** in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of one (1) year following written acceptance of the work by the **OWNER**.

## ARTICLE 10: INDEMNITY

**CONTRACTOR** shall furnish to **OWNER**, within ten (10) days of the date hereof, a certificate from an insurer acceptable to **OWNER** showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to **OWNER** and in accordance with the **Statutes of the State of Indiana**.

## **ARTICLE 11: ADJUSTMENTS OF DISPUTES**

All questions or controversies which may arise between the **CONTRACTOR** and the **OWNER** under the provisions of this Contract shall be subject to the decision of the Director of Board of Public Works and Safety of the **OWNER**, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of work covered by this Contract will be permitted except on prior written authorization by the **Board of Public Works and Safety**.

## **ARTICLE 12: COMPLETION DATE**

The **CONTRACTOR** agrees to complete the work specified in the contract within Sixty (60) consecutive calendar days after having been ordered by the **OWNER** to commence work under this contract.

## **ARTICLE 13: COUNCILMANIC APPROVAL**

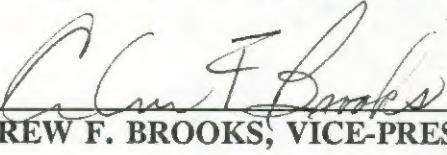
This Agreement, although executed on behalf of the **OWNER** by the Mayor and Board of Public Works and Safety of the City of Fort Wayne, Indiana, shall not be binding upon the **OWNER** unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

## **ARTICLE 14:**

This contract is governed by Laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

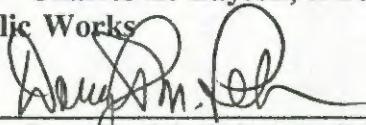
CONTRACTOR: BROOKS CONSTRUCTION CO., INC.

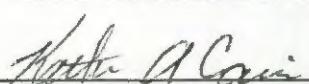
  
By: ANDREW F. BROOKS, VICE-PRESIDENT

CITY OF FORT WAYNE

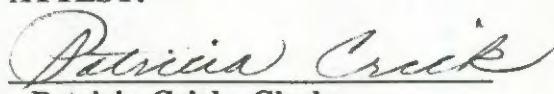
By: \_\_\_\_\_  
Paul Helmke, Mayor

BOARD OF PUBLIC WORKS AND SAFETY

By: \_\_\_\_\_  
Charles E. Layton, Director  
Public Works  
  
By: \_\_\_\_\_  
Douglas M. Lehman, Director  
Administration and Finance

By: \_\_\_\_\_  
Katherine A. Carrier, Member  


ATTEST:

  
Patricia Crick, Clerk

This document prepared by: Terry L. Atherton, P.E., L.S., Director

Read the first time in full and on motion by Burns, seconded by Qudd, and duly adopted, read the second time by title and referred to the Committee on City Utilities (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on                   , the                   , day of                   , 19          , at                    o'clock M., E.S.T.

DATED: 9-10-91

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Burns, seconded by Qudd, and duly adopted, placed on its passage. PASSED LOST by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
<u>TOTAL VOTES</u>	<u>9</u>			
<u>BRADBURY</u>	<u>✓</u>			
<u>BURNS</u>	<u>✓</u>			
<u>EDMONDS</u>	<u>✓</u>			
<u>GiaQUINTA</u>	<u>✓</u>			
<u>HENRY</u>	<u>✓</u>			
<u>LONG</u>	<u>✓</u>			
<u>REDD</u>	<u>✓</u>			
<u>SCHMIDT</u>	<u>✓</u>			
<u>TALARICO</u>	<u>✓</u>			

DATED: 9-24-91

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING MAP) ORDINANCE RESOLUTION NO. S-235-91 on the 24th day of September, 1991

ATTEST:

(SEAL)

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Samuel J. Talarico  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 25th day of September, 1991 at the hour of 10:30 o'clock A. M., E.S.T.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 1st day of October, 1991, at the hour of 9:00 o'clock A. M., E.S.T.

Paul Helmke  
PAUL HELMKE, MAYOR

Admn. Appr.

TITLE OF ORDINANCE: Contract #91-05, Asphalt Restoration of Water Maintenance Utility Cuts

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works

SYNOPSIS OF ORDINANCE: Contract #91-05 is for the repair of asphalt utility Cuts that were made by the water utility. Brooks Construction Company is the contractor.

EFFECT OF PASSAGE: Improved street conditions.

PRIOR APPROVAL RECEIVED ON 8/27/91

EFFECT OF NON PASSAGE:

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$96,999.00

ASSIGNED TO COMMITTEE:

*A 91-09-11*

**BILL NO.** S-91-09-11

## REPORT OF THE COMMITTEE ON CITY UTILITIES

PAUL M. BURNS, CHAIRMAN  
CHARLES B. REDD, VICE CHAIRMAN  
EDMONDS, LONG, SCHMIDT

WE, YOUR COMMITTEE ON CITY UTILITIES TO WHOM WAS

REFERRED AN (ORDINANCE) (RESOLUTION) approving Contract  
#91-05, ASPHALT RESTORATION OF WATER MAINTENANCE UTILITY CUTS  
between BROOKS CONSTRUCTION COMPANY and the City of Fort Wayne,  
Indiana, in connection with the Board of Public Works

HAVE HAD SAID (ORDINANCE) (RESOLUTION) UNDER CONSIDERATION  
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID  
(ORDINANCE) (RESOLUTION)

DO PASS

DO NOT PASS

## ABSTAIN

NO REC

DATED: 9-24-91.

Sandra E. Kennedy  
City Clerk